

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 95-176

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. In the introductory clause, “to renumber PC 3.02, 3.03 and 3.04” should be inserted after “an order.” Also in the introductory clause, “PC” should be inserted before the cited rules. Finally, “3.01 (1) to (8)” should be “3.02.”

b. In SECTIONS 1, 2 and 3, SECTION should be written in capital letters. In SECTION 1, the treatment clause should read, “PC 1.01 is amended to read:”. In SECTION 3, the treatment clause should read, “PC 3.02 is created to read:”.

c. In s. PC 1.01, “chs. PC 1 to 7” should read “chs. PC 1 to 6.” Also, rather than add the underscored language, all that has to be added is “and (3).”

d. In the Note to s. PC 3.02, “DMRS” should be replaced with “division of merit recruitment and selection.”

Also in that Note, “employees” should be spelled “employes” to be consistent with the Wisconsin statutes.

e. In s. PC 3.02 (2), “s.” should be inserted before “PC 3.01.”

f. In s. PC 3.02 (3) (a), the title should be underlined. This comment applies throughout s. PC 3.02.

g. In s. PC 3.02 (4) (a) 1. and 2., the first word in each of the sentences should be capitalized. Also, subd. 1. should start with “The” and “exist” should follow “circumstances” in subd. 2.

h. In s. PC 3.02 (4) (a) 1., “s. 652 and 673 (2)” should be “ss. 652 and 673 (2)” since two sections of the Omnibus Budget Reconciliation Act of 1981 are cited.

4. Adequacy of References to Related Statutes, Rules and Forms

In s. PC 3.02 (4) (a) 1., the cite to federal law should be a cite to the U.S. Code. An example of a definition of poverty line is in s. 46.30 (1) (c), Stats., which defines “poverty line” as the nonfarm federal poverty line for the continental United States, as defined by the Federal Department of Labor under 42 U.S.C. s. 9902 (2).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. PC 3.02, the title would be clearer and more helpful to the reader as “FEES FOR FILING APPEALS.”

b. In s. PC 3.02, the definitions are confusing and could be deleted.

The phrase “fee appeal” is confusing because it could be interpreted as an appeal of the actual fee. Section PC 3.02 should clearly set forth that only certain appeals are subject to a fee and then describe how to pay the fee and exceptions to the fee. With such an explanation, the definition of “fee appeal” is unnecessary.

The definition of “income” refers only to the exception for hardship cases. It would be clearer if this definition were included in s. PC 3.02 (4).

The phrase “perfected appeal” is confusing. If the section clearly sets forth what an appellant must do to file an appeal, the term “perfected appeal” is unnecessary.

“Qualifying hardship affidavit” and “timely paid fee” both have meanings that are clear from the text of the section. Also, because the section is relatively brief and those terms are not used very often in the section, defining the terms is unnecessary.

If the above definitions are deleted, changes should be made throughout the section to delete the use of the above terms in cases in which the term is confusing and cross-references could be added to clarify under what subsection the reader could find an explanation of hardship affidavits, for example. For example, s. PC 3.02 (2) could be rewritten as, “Notwithstanding s. 230.44 (3), Stats., and s. PC 3.01, the commission may take no action on an appeal for which the payment of a fee is required until the commission receives the fee or hardship affidavit as required under this section.”

c. The Note to s. PC 3.02 (1) does not clarify or explain anything included in the definitions under s. PC 3.02 (1). It would be more helpful to have the information in the Note included in a subsection of s. PC 3.02.

Also in that Note, it appears that “, including classification decisions” should be under item 1) instead of item 2).

Also in the Note, under item 3), it is not clear in the statutes that an employee must be unrepresented to file an appeal under s. 230.45 (1) (c), Stats.

d. In s. PC 3.02 (2), it appears that the Note contains material that is intended to be a substantive requirement under s. PC 3.02. Because notes are not part of the substantive law created by rule, the drafter may wish to consider including the material in the Note in the text of s. PC 3.02 (2).

Also, because s. PC 3.02 (2) relates to payment of fees, it may be clearer to combine s. PC 3.02 (2) and (3). Finally, the title of sub. (2) is excessively long.

e. In s. PC 3.02 (3), it would be clearer to state “the fee for filing an appeal” instead of “the fee for filing a fee appeal.”

f. In s. PC 3.02 (4) (a), it would be clearer to the reader to state that an applicant may qualify for a hardship exception if either of the listed conditions are met.

g. In s. PC 3.02 (4) (a) 1., “, or” should be deleted and replaced with a period to facilitate inserting or deleting subdivisions in the future.

h. In s. PC 3.02 (4) (b), “stating that the appellant is economically unable to pay the filing fee without suffering severe financial hardship” is repetitive of s. PC 3.02 (4) (a). It would be clearer to state that the affidavit must state that the appellant meets one of the criteria set forth in par. (a). Also, “may demonstrate” should replace “demonstrates.”

i. In s. PC 3.02 (5), the title would be clearer as “TIME LIMITS FOR PAYING FEES.” Also in that subsection, the titles of the paragraphs are long and may be clearer as: (a) Requirements at the time of filing.; (b) Exceptions; time limits.; and (c) Exceptions; defective hardship affidavit. Note that the titles should end with periods rather than colons.

j. In s. PC 3.02 (5) (a), subds. 1. and 2. could be combined and it may be clearer to state, “Except as provided under par. (b), the fee or the qualifying hardship affidavit for filing an appeal shall be received by the commission at the time the appeal is filed.” In pars. (a), (b) and (c), “sub. (3) (a) and (b)” should replace “pars. (3) (a) and (b).”

k. In s. PC 3.02 (6), it may be clearer to state, “The commission shall dismiss without prejudice the appeal of any appellant who has failed to submit the required fee payment or hardship affidavit within the time limits under sub. (5).”

Also in that subsection, the term “without prejudice” is a somewhat technical term. It would be clearer to state that such a dismissal does not preclude the appellant from refiling his or her appeal.